

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION**

UNITED STATES OF AMERICA

v.

PAUL JOSEPH DELLA ROCCO

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MO: 18-CR-237

ORDER DENYING DEFENDANT’S MOTION TO SUPPRESS

BEFORE THE COURT is Defendant Paul Joseph Della Rocco’s Motion to Suppress. (Doc. 30). Defendant stands charged with possession with intent to distribute fifty (50) grams or more of actual methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). (Doc. 18). In his Motion, Defendant asserts that Ector County Law Enforcement (law enforcement) lacked probable cause to conduct the search of his vehicle which yielded, among other things, the methamphetamine at issue. (Doc. 30). Accordingly, Defendant asks that any evidence seized or testimony provided as a result of law enforcement’s allegedly unconstitutional actions be suppressed. *Id.* After holding a hearing prior to trial on January 16, 2019, the Court orally **DENIED** Defendant’s Motion to Suppress. The Court now enters this Order memorializing the Court’s ruling.

I. BACKGROUND

Ector County Sheriff’s Office (ECSO) Special Investigations Unit (SIU) Sergeant Sanchez and Drug Enforcement Administration (DEA) Task Force Officer Gerald Ornelas (the Officers) both testified to having interacted with Cooperating Defendant Jenny Hofer on previous occasions—dating back to as early as 2006—regarding narcotics-related violations. One of the officers testified that over that period of time, Hofer had never given information that

was determined to be false. On September 14, 2018, the Officers were involved in a traffic stop of Hofer in which law enforcement seized approximately 186 grams of methamphetamine. Following the traffic stop, Hofer agreed to cooperate with law enforcement and provided names of individuals she was aware of that were involved in narcotics transactions—including Defendant. The Officers testified that this was their first time hearing of Defendant, but they were aware of other individuals named and their involvement with narcotics. Hofer further identified Defendant as her supplier and informed the Officers of an impending narcotics transaction with Defendant to exchange \$4,000.00 for one pound and one ounce of methamphetamine. Hofer explained that Defendant would be traveling from Tucson, Arizona to Odessa, Texas to conduct the transaction. The Officers released Hofer at that time.

On October 5, 2018, Hofer called Sergeant Sanchez and informed him that Defendant asked to meet her at a Hooters Restaurant in Odessa, Texas, to complete their previously-arranged transaction (that Hofer disclosed to Officers on September 14, 2018). Hofer informed Sergeant Sanchez that Defendant was driving a silver, Nissan pickup truck. Hofer met Sergeant Sanchez at ECSO where Hofer was searched, given a recording device, and instructed to meet with Defendant according to their arrangement. Sergeant Sanchez followed Hofer, being driven by another individual, to the Hooters without any detours or stops. Meanwhile, Officer Ornelas—who had been contacted by Sergeant Sanchez and provided the description of Defendant's vehicle—located a vehicle matching the description and displaying Arizona license plates in the Hooters parking lot. Officer Ornelas testified that he and other narcotics officers set up surveillance, during which he did not observe anyone enter or leave the vehicle.

Upon arrival, Sergeant Sanchez observed Hofer walk directly into the restaurant. A short time later, Hofer contacted Sergeant Sanchez, alerted him that the methamphetamine was inside

the Nissan pickup truck, and informed him that Defendant and Hofer were leaving the restaurant and heading to the parking lot. Sergeant Sanchez watched Defendant and Hofer exit the Hooters, and the Officers observed Defendant walk straight to and enter the previously identified Nissan pickup truck. At this time, law enforcement approached and detained Defendant without incident. Defendant denied consent to search the vehicle. Law enforcement then contacted K-9 Lieutenant Richard Dickson to conduct an open-air sniff of the vehicle. K-9 Lieutenant Dickson arrived on scene approximately 25 minutes after he was called and, after conducting an open-air sniff, the K-9 positively alerted to the vehicle. Law enforcement then conducted a search of the vehicle and discovered various quantities of methamphetamine, money, ledgers, small baggies, and a digital scale. Defendant was *Mirandized* on the scene and—after being transported to ECSO—*Mirandized* again in a recording before being interviewed by and providing statements to Officer Ornelas.

On December 20, 2018, Defendant filed the instant Motion to Suppress, arguing that

In this case Ector County Law Enforcement lacked probable cause to search the vehicle. The Defendant should not have been detained. There was no evidence that the cooperating defendant was a reliable source. The use of the drug dog unreasonably prolonged the Defendant's detention. There was no reason that law enforcement could not have obtained a warrant. The results of the search should be suppressed.

(Doc. 30 at 2–3). The Government asserts that there was sufficient probable cause to search Defendant's vehicle under the automobile exception. (Doc. 34 at 3). As to the open-air dog sniff, the Government asserts it was an unnecessary step taken by law enforcement only to solidify the probable cause that already existed. *Id.*

II. DISCUSSION

1. Probable Cause

The Fourth Amendment ensures that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV. The warrantless search of an area in which Defendant has a privacy interest is per se unreasonable, unless the Government can show that an exception applies. *Katz v. United States*, 389 U.S. 347, 357 (1967). In this case, the Government relies on the automobile exception to the Fourth Amendment’s warrant requirement. (Doc. 34 at 4). Under the automobile exception, officers may conduct a search if they have probable cause to believe that the vehicle contains contraband or evidence of a crime. *United States v. Ned*, 637 F.3d 562, 567 (5th Cir. 2011). In other words, the search of a vehicle is not unreasonable if based on facts that would justify the issuance of a warrant—even though a warrant has not actually been obtained. *See Maryland v. Dyson*, 527 U.S. 465, 467 (1999). Probable cause is determined by examining the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 230-31 (1983).

In sum, the Government’s probable cause argument—as laid out in its Response—is that:

[Hofer] had been in contact with [Defendant] to set up a deal for the purchase of one pound and one ounce of methamphetamine for \$4,000.00. [Hofer] met with [Defendant] and confirmed that the methamphetamine was in the pickup being driven by [Defendant]. That information was relayed immediately to law enforcement who were waiting in the parking lot and who approached [Defendant] when he left the restaurant.

(Doc. 34 at 4). Accordingly, the Government believes law enforcement had developed sufficient probable cause to detain Defendant and search his vehicle. *Id.*

Because the Government’s argument relies on a Cooperating Defendant’s information, the Government must provide evidence to establish Hofer’s reliability. *See United States v. Fisher*, 22 F.3d 574, 578 (5th Cir. 1994) (Discussing the pertinent considerations when analyzing

whether a warrant's affidavit based on information from a confidential informant sufficiently established probable cause). To determine whether such information is reliable, courts consider: (1) the nature of the information; (2) whether there has been an opportunity for the police to see or hear the matter reported; (3) the veracity and the basis of the knowledge of the informant; and (4) whether there has been any independent verification of the matters reported through police investigation. *See United States v. Mays*, 466 F.3d 335, 343–44 (5th Cir. 2006).

The Officers testified that they had previous encounters with Hofer and were aware of her connections to and involvement in the narcotics business. Further—although unfamiliar with Defendant's name and role—the Officers knew other individuals Hofer named to be users and distributors involved in narcotics transactions. Accordingly, the Officers established Hofer's basis of knowledge and both testified that they believed Hofer to be reliable. *Cf. United States v. Kolodziej*, 712 F.2d 975, 977 (5th Cir. 1983) (Finding probable cause did not exist where an affidavit failed to set forth the basis of a cooperating co-conspirator's knowledge and contained no affirmative allegation that informants were reliable). Hofer went on to identify Defendant as her supplier and admitted to having arranged an upcoming deal with Defendant. *See United States v. Martin*, 615 F.2d 318, 326 (5th Cir. 1980) (while a statement against penal interest—made in the hopes of currying favor—cannot establish reliability alone, it is entitled to some weight).

Hofer informed the Officers that, to conduct the transaction, Defendant would drive the methamphetamine to Odessa, Texas from Tucson, Arizona. Hofer also identified Defendant in photos to law enforcement and informed Sergeant Sanchez that Defendant was driving a silver, Nissan pickup truck. On October 5, 2018, law enforcement found a silver, Nissan pickup truck with Arizona plates parked in the lot of the Odessa Hooters—where Hofer told police she and

Defendant had arranged to meet. Conducting surveillance of the vehicle, the Officers observed a man matching the previously-identified photos exit the restaurant with Hofer and walk to the pickup truck. Thus, law enforcement was able to corroborate the details provided by Hofer with regard to the narcotics transaction with Defendant through independent investigation. *See Illinois v. Gates*, 462 U.S. 213, 244 (1983) (“Because an informant is right about some things, he is more probably right about other facts.”).

The Officers both testified to their experience as a DEA Task Force Officer and ECSO SIU Sergeant, respectively. The Officers knew of Hofer’s involvement over a decade in the narcotics business, specifically methamphetamine. She also confirmed her knowledge of others in the field and had never given false information or misled them. Based on their collective knowledge and experience, the Officers believed and confirmed Hofer’s information prior to detaining Defendant and searching his vehicle. *See Camacho v. United States*, 116 F. Supp. 3d 762, 786 (W.D. Tex. 2015). The Court agrees that Hofer was sufficiently reliable. Based on the totality of the circumstances, the Court finds that law enforcement had probable cause to believe that the vehicle contained contraband or evidence of a crime at that time.

2. Dog Sniff

Defendant further argues that the use of the drug dog unreasonably prolonged his detention. (Doc. 30 at 2). A seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution. *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). The Government asserts that, because law enforcement had already developed probable cause to search the vehicle, the open-air sniff was unnecessary but simply used to solidify the probable cause developed and confirm the information received. (Doc. 34 at 3). As previously discussed, the Court finds that law

enforcement had probable cause to believe that the pickup truck contained contraband or evidence of the crime. But, out of an abundance of caution, law enforcement requested consent—which Defendant denied—and then immediately contacted K-9 Lieutenant Dickson. (Doc. 34 at 2). There is no evidence that law enforcement was dilatory in their actions and, instead, it appears the appropriate steps were taken to promptly confirm their probable-cause beliefs. *See United States v. Schlieve*, 159 F. App'x 538, 543–44 (5th Cir. 2005). Accordingly, the Court finds the approximate 25-minute wait for the drug dog to arrive on scene and further solidify probable cause to search did not unreasonably prolong the time required for law enforcement to complete their mission. *See Caballes*, 543 U.S. at 407–08.

Therefore, the Court finds that the search of Defendant's vehicle was not unconstitutional and thus the evidence and testimony derived therefrom should not be suppressed.

3. Statements by Defendant

Finally, to the extent Defendant raises an argument that the statements he seeks to suppress were also made involuntarily, the Court finds that Defendant was *Mirandized*—not once, but twice—and there was no evidence that Defendant invoked his rights or was coerced into speaking with Officer Ornelas. Accordingly, the Court finds that Defendant's statements were voluntarily made. *See United States v. Scurlock*, 52 F.3d 531, 536 (5th Cir. 1995).

III. CONCLUSION

For the foregoing reasons, and the reasons expressed at the conclusion of the hearing, the Court **DENIES** Defendant's Motion to Suppress. (Doc. 30).

It is so **ORDERED**.

SIGNED this 18th day of January, 2019.

A handwritten signature in black ink, appearing to read "David Counts", with a stylized star-like flourish at the end.

DAVID COUNTS
UNITED STATES DISTRICT JUDGE